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155-1298

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OGC Has Reviewed

2 June 1955

MEMORANDUM FOR: Deputy Director (Support)

SUBJECT : Secrecy Agreement

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1. There is forwarded herewith the draft secrecy agreement, which was to be included in [REDACTED] and has been under discussion for many months, together with various earlier drafts. In an attempt to deal with the problem of prohibiting employees and ex-employees from publishing information concerning the Agency, which we understand you have discussed with Mr. Houston, we have included a new paragraph 8 (and have renumbered the present paragraphs 8 and 9). It is recommended that the new draft be submitted to the Director for his approval.

2. Employment agreements whereby employees and ex-employees are committed to refrain from divulging trade secrets and information confidentially furnished them during employment have been the subject of many judicial decisions over the years. Generally, the rule is that knowledge acquired by the employee during his employment cannot be used for his own advantage to the injury of the employer or in competition with him during employment, and even after the employment has ceased the employee remains subject to a duty not to disclose or to use for his own advantage secret information confidentially entrusted to him. The decisions generally concern employers who are engaged in trade, which CIA admittedly is not; nor is CIA the possessor of trade secrets or secret information confidentially entrusted to its employees which could be used to the advantage of the employee in a competitive and commercial sense. Moreover, the courts distinguish between trade secrets and confidential information, which must not be divulged, and the skill and intelligence acquired or increased and improved through experience or through instruction received in the course of the employment, which becomes part of the employee's personal equipment and may be used. On the other hand, secrets and confidential information are the very essence of an intelligence organization and their unauthorized divulgence a fortiori would be to the disadvantage of the employer. Although the two situations are not precisely the same, and notwithstanding that all information acquired through employment is not protected under the rules mentioned, there appears no significant disadvantage to the inclusion in our employment agreements of a prohibition, in broad terms, against publication, and some advantages would flow therefrom: (a) the employee would be aware of the requirement upon him (b) the employee likely would feel morally bound to comply with a commitment made in writing over his signature and (c) even though it may not be settled that such an agreement could be enforced by court action the possibility of enforceability would be a

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factor which the employee probably would not ignore (however, some employees possibly would not ignore the publicity value of a CIA attempt to enjoin publication).

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[REDACTED]

[REDACTED]

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